

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Criminal Action No. 3:19-cr-00027-RGJ

SHAUNT GASAWAY

Defendant.

* * * * *

ORDER

This matter comes before the Court on Defendant's Motion to Suppress [DE 18] and Motion to Dismiss. [DE 29]. Plaintiff filed timely responses. [DE 24; DE 33]. The Court held an evidentiary hearing on the Motion to Suppress. [DE 30]. Both matters are now ripe for adjudication. For the reasons below, the Court **DENIES** Defendant's Motion to Suppress [DE 18] and **DENIES** Defendant's Motion to Dismiss [DE 29].

I. FACTUAL BACKGROUND¹

On October 10, 2018, Louisville Metro Police Department ("LMPD") officers were dispatched to a reported shooting at the College Court Apartments in Louisville, Kentucky. [DE 31 at 88-89; DE Investigative Letter 24-2 at 67]. Officer Corniel testified that he and other officers rendered aid, secured the crime scene and waited for homicide detectives to arrive. [DE 31 at 89; DE 24-2 at 67]. At the time, there was no shooter in custody. [DE 31 at 121-122]. While waiting for the homicide detectives to complete their investigation, several officers noticed a group of bystanders screaming and running away from a male suspect, later identified as Shaunt Gasaway. [DE 31 at 90; DE 24-2 at 67].

¹ After the hearing, the Court was able to flip the orientation of its computer screen to enable the Court to review the body camera footage right-side-up.

Officer Corniel saw Mr. Gasaway approach the crime scene, holding a handgun and wearing plastic gloves. [DE 31 at 90, 101; DE 24-2 at 67]. Officer Corniel's partner yelled "gun," alerting the officers that an armed individual was approaching them. [DE 31 at 90]. Officers drew their guns, commanding Mr. Gasaway to stop and drop the handgun. *Id.*; DE 24-2 at 67. Ignoring the officers' orders, Mr. Gasaway crouched near a bush, stood upright, and then "bladed his body away...concealing his body or maybe concealing something in his hand." [*Id.*; DE 24-2 at 67]. When Mr. Gasaway "raised back up," Officer Corniel could "no longer identify where" the handgun was located. [DE 31 at 96]. Unable to see the gun, Officer Corniel ran towards Mr. Gasaway. [*Id.*]. Officer Corniel performed a "controlled takedown," and—because Mr. Gasaway "actively resisted" and refused to put his "hands behind his back"—he dry stunned Mr. Gasaway with a taser. [DE 31 at 95-96]. Once detained, officers discovered that Mr. Gasaway was wearing one plastic glove. [DE at 104].

Officers placed Mr. Gasaway in Officer Corniel's police cruiser. [DE 24-3 at 78]. Five to seven feet from where Mr. Gasaway had been detained, officers found a .40 caliber pistol and a plastic glove. [DE 31 at 99, 104, 106; DE 24-2 at 67; Ex. 2, Corniel, at 01:17]. Officer Corniel read Mr. Gasaway his *Miranda* rights and began to question him. [DE 24-2 at 67]. After Mr. Gasaway terminated the questioning, Officer Corniel ran his criminal record and determined that he was a felon. *Id.* Less than forty-five minutes after detaining Mr. Gasaway, they placed him under arrest. [DE 24-3 Uniform Citation at 78].

A grand jury charged Mr. Gasaway in a single-count indictment with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). [DE 1]. Mr. Gasaway now moves to suppress all evidence discovered during this investigatory stop. [DE 18 at 37]. Mr. Gasaway

argues that he was unlawfully stopped because the police did not have reasonable, articulable suspicion of criminal activity to detain him. *Id.*

II. STANDARD

“It is well settled that in seeking suppression of evidence the burden of proof is upon the defendant to display a violation of some constitutional or statutory right justifying suppression.” *United States v. Rodriquez-Suazo*, 346 F.3d 637, 643 (6th Cir. 2003) (quoting *United States v. Feldman*, 606 F.2d 673, 679 n.11 (6th Cir. 1979)). The defendant’s burden of proof extends to both “the burden of production and persuasion.” *United States v. Chaar*, 137 F.3d 359, 363 (6th Cir. 1998). When a defendant has established that he was subject to a *Terry* stop, however, the “government bears the burden of showing the seizure based on reasonable suspicion satisfied the conditions of an investigative *Terry* seizure.” *United States v. Winfrey*, 915 F.2d 212, 216 (6th Cir. 1990) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)).

“The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.” *United States v. Atchley*, 474 F.3d 840, 847 (6th Cir. 2007). In the interest of safety, however, an officer may stop and briefly detain a person for investigative purposes. *Id.* at 847. To do so, the officer must have “reasonable, articulable suspicion that [a] person has been, is, or is about to be engaged in criminal activity.” *Id.* (quoting *United States v. Hensley*, 469 U.S. 221, 227 (1985)). An encounter between police and an individual is an investigatory *Terry* stop when “it is apparent from the circumstances that the individual was not free to ignore the officer and proceed on his way.” *United States v. Pope*, 561 F.2d 663, 668 (6th Cir. 1977). When evaluating whether an officer had reasonable suspicion, the court engages in a two-part analysis of the reasonableness of the investigatory *Terry* stop. *United States v. Mays*, 643 F.3d 537, 541 (6th Cir. 2011) (citing *United States v. Smith*, 594

F.3d 530, 536 (6th Cir. 2010)). First, the court determines whether there was a proper basis for the stop. *Id.* If the stop was proper, the court then determines whether the degree of intrusion was reasonably related in scope to the situation at hand. *Id.*

“In order to deter law enforcement officials from violating the Fourth Amendment by stopping persons without reasonable suspicion or by arresting them without probable cause, the Supreme Court has directed that ‘all evidence obtained by an unconstitutional search and seizure [is] inadmissible in federal court regardless of its source.’” *United States v. Pearce*, 531 F.3d 374, 381 (6th Cir. 2008) (quoting *Mapp v. Ohio*, 367 U.S. 643 (1961)).

III. DISCUSSION

A. Officer Corniel properly stopped Mr. Gasaway.

“An investigatory stop of an individual by a law enforcement officer is proper so long as there is a reasonable suspicion for the stop.” *Smith*, 594 F.3d at 536. When making a *Terry* stop, an officer must rely on more than a hunch and “must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant the intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). “[C]ertain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person has committed or is about to commit a crime.” *Fla. v. Royer*, 460 U.S. 491, 498 (1983).

“Reasonable suspicion is based on the totality of the circumstances,” *Joshua v. DeWitt*, 341 F.3d 430, 443 (6th Cir. 2003) (citation omitted), and it exists if “a reasonably prudent [person] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger,” *Terry*, 392 U.S. at 27. This standard is objective. *Id.* at 22 (“If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be secure in their persons, houses, papers, and effects, only in the discretion of the police.”

(internal quotation marks omitted)). “[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.” *Illinois v. Wardlow*, 528 U.S. 119, 124–25 (2000). Lawful conduct may create reasonable suspicion for an investigatory stop when considered along with other information known to law enforcement. *United States v. Sokolow*, 490 U.S. 1, 9-10 (1989).

Here, based on the totality of the circumstances, Officer Corniel’s stop was proper because he relied on specific and articulable facts that Mr. Gasaway may have been engaged in criminal activity (i.e., refusing to drop the gun, concealing it, wearing plastic gloves, walking towards a shooting scene). See *United States v. Pearce*, 531 F.3d 382-83 (6th Cir. 2008)(holding that the officer’s *Terry* stop was proper). Based on Mr. Gasaway’s behavior, Officer Corniel had reasonable suspicion that Mr. Gasaway may have been the shooting suspect, may have been about to shoot at the police officers or into the crowd, or may have concealed the gun because he knew that it was illegal for him to possess it.

The facts in *Pearce* are much like Mr. Gasaway’s case. In *Pearce*, the police conducted a special operation to address a recent increase in criminal activity in an area where a homicide occurred a few days earlier. *Pearce*, 531 F.3d at 377. The defendant, upon seeing the officer, began to act suspiciously by hunching over, sticking his hands into the back of his waistline, and slowly backing away from the officer. *Id.* at 378. Afraid that the defendant was armed and dangerous, the officer drew his gun and ordered the defendant to show his hands. *Id.* The defendant ignored the officer’s commands, and then another officer detained and searched him. The officers later recovered a handgun and charged the defendant with being a felon in possession of a handgun. *Id.* at 377-378. The Sixth Circuit held that the officer properly stopped the defendant because “the [officer] had an objectively reasonable suspicion that ‘his safety or that of others was

in danger.” *Id.* at 382 (quoting *Terry*, 392 U.S. at 27). As in *Pearce*, Officer Corniel had an “objectively reasonable suspicion” based on his own observations that Mr. Gasaway was armed and dangerous, and that his safety or that of the other officers or bystanders was in danger.

B. Officer Corniel’s stop of Mr. Gasaway was reasonably related in scope to the situation at hand.

“In the second part of the *Terry* stop analysis, [the] court determines whether the degree of intrusion, ‘was reasonably related in scope to the situation at hand, which is judged by examining the reasonableness of the officials’ conduct given their suspicions and the surrounding circumstances.” *Smith*, 594 F.3d at 536 (quoting *United States v. Caruthers*, 458 F.3d 459, 464 (6th Cir. 2006)). “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *United States v. Davis*, 430 F.3d 345, 354 (6th Cir. 2005)(quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Courts must examine “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” *United States v. Sharpe*, 470 U.S. 675, 686 (1985).

When Officer Corniel sought to detain Mr. Gasaway, he “actively resisted” and refused to put his “hands behind his back.” [DE 31 at 92]. Once officers detained Mr. Gasaway, they searched the nearby area and found a .40 caliber handgun and a glove. The officers placed Mr. Gasaway in a vehicle where Officer Corniel unsuccessfully tried to question him. Afterwards, Officer Corniel searched Courtnet and determined that Mr. Gasaway was a felon.


Because Officer Corniel had reasonable suspicion, it was proper for him to stop Mr. Gasaway. Because during the approximately forty-five minutes Mr. Gasaway was detained the officers were subduing him, searching for a gun, questioning him, and running his criminal record,

the officers' investigatory detention of Mr. Gasaway and the degree of intrusion was reasonable for the situation at hand.

IV. CONCLUSION

Accordingly, for the reasons stated, and being otherwise sufficiently advised, **IT IS ORDERED** as follows:

- (1) Defendant's Motion to Suppress, [DE 15], is **DENIED**; and
- (2) Defendant's Motion to Dismiss, [DE 29], is **DENIED** as moot as the Government has since indicted him with a superseding indictment [DE 35] that includes the *Rehaif v. United States* "knowledge" requirement. *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019).
- (3) This matter is set for an in-person status conference on **August 13th, 2019 at 10:00 a.m.** at the Gene Snyder United States Courthouse before the Honorable Rebecca Grady Jennings, United States District Judge.



Rebecca Grady Jennings, District Judge
United States District Court

August 2, 2019